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HAWAII  
LABOR RELATIONS BOARD

Attorneys for Director of Labor  
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of	) CASE NO. OSH 2005-16
DIRECTOR, DEPARTMENT OF LABOR	) (Inspection No. 308486463)
AND INDUSTRIAL RELATIONS,	)
	) STIPULATION AND SETTLEMENT
Complainant,	) AGREEMENT; EXHIBIT A; APPROVAL
	) AND ORDER
vs.	)
	)
QUALITY SHEETMETAL & AIR	)
CONDITIONING CO., LTD.,	)
	)
<u>Respondent.</u>	)

STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations  
("Director") and Respondent QUALITY SHEETMETAL & AIR  
CONDITIONING CO., LTD. ("Respondent") having reached a full and  
complete settlement of the above-captioned contested case  
presently pending before the Hawaii Labor Relations Board  
("Board") stipulate and agree as follows:

On or about May 4, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at Makaha Beach Park, Farrington Highway, Waianae, Hawaii, 96792. As a consequence of said inspection the Director issued a Citation and Notification of Penalty on June 24, 2005 ("Citation") to Respondent alleging a repeat violation of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$4,000.00. See Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at Makaha Beach Park, Farrington Highway, Waianae, Hawaii, 96792.

3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees as defined in HRS § 396-3, and was therefore subject to the

requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citation is amended by the following:  
citation 1, item 1, alleging a 'repeat' violation of 29 CFR 1926.501(b)(11), is recharacterized to a 'serious' violation.

5. The aggregate penalty of \$4,000.00 is reduced to \$1,750.00.

6. The Respondent will purchase an approved eight-foot by four-foot banner and prominently display it at its baseyard or a worksite for six (6) months after the approval of this settlement agreement. The banner may be purchased from any printer of Respondent's choice. The design of the banner shall be provided by the Director and any modification to the design will require approval from the Director prior to the printing of the banner. Respondent shall coordinate with the Director in obtaining the Director's banner design for its printer. (The Director's phone number is 586-8844.) And within thirty days of the settlement agreement the Respondent will provide the Director with proof of the purchase of the banner.

7. Respondent will provide training to all of its employees in fall protection. The training materials and outline will be reviewed by the Director prior to the formalization of this Stipulated Agreement and Order. The

Respondent shall verify the training by preparing a written certification record, which shall contain the name or other identity of the employee trained, the date of the training, the topic of the training session, and the signature of the person who conducted the training.

8. Except for the stipulated amendments described in paragraphs 4 through 7 above, the Citation is confirmed in all other respects, and upon approval by the Board this Stipulated Agreement and the Citation, as amended, shall become a final order of the Director.

9. If the Respondent fails to comply with each and every term of this Agreement, this Agreement shall become null and void upon written notice by the Director and the original Citation of June 24, 2005, shall become a final order of the Director, and their corresponding penalties shall become immediately due and owing to the Director. If the Director institutes legal action to collect the original penalty of the Citation of June 24, 2005, the Respondent agrees to pay all costs and fees, including attorneys' fees, associated with the collection of the unpaid penalty. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

10. Respondent shall post a copy of this Stipulated Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Stipulated Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

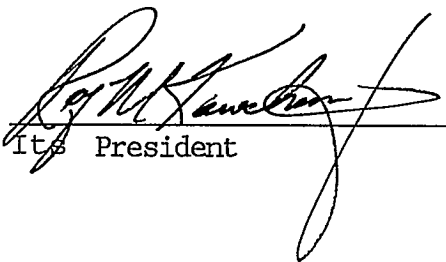
11. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

12. Nothing in this Stipulated Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, February 13, 2006.

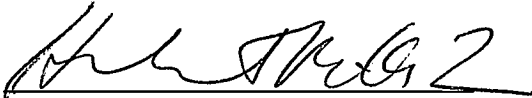
QUALITY SHEETMETAL & AIR  
CONDITIONING CO., LTD.

By:

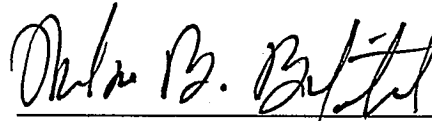
  
Its President

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS



HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor  
and Industrial Relations,  
State of Hawaii



NELSON B. BEFITEL

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 181

DATED: FEBRUARY 24, 2006



BRIAN K. NAKAMURA, Chair



KATHLEEN RACUYA-MARKRICH, Member



EMORY J. SPRINGER, Member

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Director of Labor and Industrial Relations v. Quality Sheetmetal  
& Air Conditioning Co., Ltd., Case No. OSH 2005-16, Inspection  
No. 308486463 - Stipulation and Settlement Agreement

State of Hawaii  
Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813  
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0004 2962 7102

## Citation and Notification of Penalty

**To:**  
Quality Sheetmetal & Air Conditioning Co Ltd  
and its successors  
1098 Sand Island Pkwy  
Honolulu, HI 96819

Inspection Number: 308486463 (Charles Flippo)  
Inspection Date(s): 05/04/2005 - 05/04/2005  
Issuance Date: 06/24/2005  
OSHSO ID: D3062  
Optional Report No.: 06305  
Inspection Type: Referral  
Scope of Inspection: Comprehensive Inspection

**Inspection Site:**  
Canoe Halau at Makaha Beach Park  
Farrington Hwy  
Waianae, HI 96792

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.



The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.



State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 06/24/2005. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on \_\_\_\_\_ at \_\_\_\_\_. Employees and/or representatives of employees have a right to attend an informal conference.

# STATE OF HAWAII

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division

830 Punchbowl Street, Room 425  
Honolulu, HI 96813

Inspection Number: 308486463  
Inspection Dates: 05/04/2005 - 05/04/2005



Issuance Date: 06/24/2005

## Citation and Notification of Penalty

Company Name: Quality Sheetmetal & Air Conditioning Co Ltd  
Inspection Site: Canoe Halau at Makaha Beach Park, Farrington Hwy, Waianae, HI 96792

### Citation 1 Item 1 Type of Violation: **Repeat**

29 CFR 1926.501(b)(11) [Refer to chapter 12-121.2, HAR] was violated because:

A worker was seen working from a roof 28 feet in height without any means of fall protection. A fall from that height to a lower level will potentially result in a serious injury or death.

29 CFR 1926.501(b)(11) states "Steep roofs. Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems."

Quality Sheetmetal & Air Conditioning Co., Ltd. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 29 CFR 1926.501(b)(10) [Refer to chapter 12-121.1, HAR] which was contained in HIOSH inspection #306261827, citation 1, item 1, issued on December 9, 2003, which became a final order on December 29, 2003.

Abatement verification, such as written, photographic, video graphic evidence of abatement is required.

Location: Canoe Halau at Makaha Beach Park

Date By Which Violation Must be Abated:

06/28/2005

Penalty:

\$4,000.00

NELSON B. BEFITEL  
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii  
Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
Honolulu, HI 96813

### SUMMARY OF PENALTIES

Company Name: Quality Sheetmetal & Air Conditioning Co Ltd  
Inspection Site: Canoe Halau at Makaha Beach Park  
Farrington Hwy  
Waianae, HI 96792  
Issuance Date: 06/24/2005

Summary of Penalties for Inspection Number 308486463

Citation 01, Repeat = \$4,000.00

TOTAL PENALTIES = \$4,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.